

status.^{34/} Any company that is created under the auspices of an IGO or specifically assigned IGO assets will necessarily benefit to a significant extent from its past privileges, as well as from the substantial international dominance and broad market access enjoyed by Intelsat and Inmarsat.^{35/} As the Commission observes, "[t]hese features could result in privileged access to national markets around the world and diminish effective competition in the U.S. market."^{36/}

For these reasons, Columbia urges the Commission to apply a stringent "critical mass" test to any Earth station application that requests authority to access a satellite system operated by any satellite operator formed with the assistance of or using assets previously controlled by an IGO. Such systems should be permitted to provide domestic or international service in the U.S. market only if U.S.-licensed systems have access to at least 80 percent of the population of the nations represented by entities investing directly or indirectly in an IGO spin off, including any non-IGO affiliated private investors investing directly or indirectly in that system.^{37/}

^{34/} See *id.* at 23 (¶ 64).

^{35/} See *id.* at 13 (¶ 29).

^{36/} See *id.* at 23 (¶ 64).

^{37/} Where an IGO has itself invested in its own name in a spin-off entity, all member nations of the IGO should be treated as individual investors for purposes of making this calculation. (Member nations of an IGO have the power to vote on such an investment, and will plainly benefit from it.)

With respect to the core treaty-based international services that are provided by Intelsat and Inmarsat, the Commission not unreasonably proposes to continue licensing these communications without applying its ECO-Sat test to future Earth station applications — even where such applications involve expanded services.^{38/} Columbia does not disagree with this determination, provided that communications via the facilities of Intelsat and Inmarsat are not aided or facilitated in any way, or provided in cooperation or under contract with any companies formed using former assets of Intelsat or Inmarsat.

Finally, Columbia strongly supports the Commission's proposal to require affected Earth station operators or users to request a license modification if any space segment with which they are licensed to communicate is to be transferred from an IGO to a spin-off entity.^{39/} The Commission should place such Earth station modification applications on Public Notice and invite public comment for the purpose of determining whether the proposed modified operation of the Earth station is consistent with the public interest and U.S. policy. Furthermore, the Commission should subject such modification applications to the "home market"/"critical mass" ECO-Sat test. Although the revocation of an Earth station license under these circumstances might result in the disruption of existing services to consumers, the Commission should weigh the temporary

^{38/} See NPRM, FCC 96-210, slip op. at 24 (¶¶ 69-70).

^{39/} See id. at 25 (¶ 74).

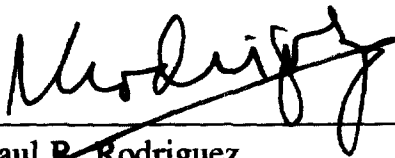
inconvenience of any such disruption against the long-term anticompetitive effects of permitting a non-U.S.-licensed system to employ facilities that were established with the benefit of an IGO's international privileges and immunities to the detriment of the entire U.S. satellite industry.

III. CONCLUSION

For the foregoing reasons, Columbia urges the Commission to adopt the broad framework proposed in the NPRM with the modifications and clarifications proposed by Columbia herein.

Respectfully submitted,

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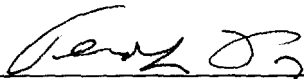
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